

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FINANCIAL PACIFIC LEASING INC.,

Plaintiff,

v.

RVI AMERICA INSURANCE CO.,

Defendant.

Case No. C21-0756-LK

ORDER ON MOTION TO STAY
DISCOVERY, OR, IN THE
ALTERNATIVE, FOR PROTECTIVE
ORDER

I. BACKGROUND

This is an insurance coverage action brought by Plaintiff Financial Pacific Leasing, Inc. against Defendant RVI America Insurance Company for breach of contract, declaratory judgment, breach of Defendant's duties of good faith and fair dealing, violations of Washington's Consumer Protection Act, RCW 19.86.020, and violations of the Washington Insurance Fair Conduct Act, RCW 48.30.015. *See* Dkt. 14 ¶¶ 48–66. On August 23, 2021, Defendant moved to dismiss the lawsuit pursuant to Federal Rule of Civil Procedure 12(b)(6). *See* Dkt. 23.

Subsequently, on November 8, 2021, Plaintiff served Defendant with its First Set of Interrogatories and Requests for Production. *See* Dkt. 37-1. On December 6, 2021, Defendant's

counsel conferred with Plaintiff's counsel regarding a stay of discovery pending resolution of Defendant's Motion to Dismiss, but the parties were unable to reach an agreement. Dkt. 37 ¶¶ 3–4. Defendant's counsel then informed Plaintiff's counsel that Defendant would be objecting to Plaintiff's discovery requests as impermissible and would file a motion to stay discovery, or, alternatively, for a protective order under Federal Rule of Civil Procedure 26(c). *Id.*

On December 8, 2021, Defendant filed the present Motion to Stay Discovery, or, in the Alternative, for Protective Order. Dkt. 36. Plaintiff opposes Defendant's Motion. *See* Dkt. 40. Subsequently, on March 31, 2022, the Court issued a Report and Recommendation which recommends denying Defendant's Motion to Dismiss. Dkt. 43.

II. DISCUSSION

A. Stay of Discovery

Defendant moves the Court to enter a blanket stay of discovery pending resolution of Defendant's Motion to Dismiss. Dkt. 36 at 6–8.

Under Federal Rule of Civil Procedure 26(c), district courts have discretion to limit discovery “for good cause . . . to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense” Fed. R. Civ. P. 26(c)(1); *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981); *Schreib v. Am. Family Mut. Ins. Co.*, 304 F.R.D. 282, 284 (W.D. Wash. 2014). “Although a court may relieve a party from the burdens of discovery while a dispositive motion is pending, this is the exception and not the rule.” *White v. Skagit Bonded Collectors, LLC*, No. C21-0697-LK, 2022 WL 508825, at *1 (W.D. Wash. Jan. 24, 2022) (citations omitted). Indeed, a pending motion to dismiss is generally not grounds for staying discovery. *See Old Republic Title, Ltd. v. Kelley*, No. C10-0038-JLR, 2010 WL 4053371, at *4

(W.D. Wash. Oct. 13, 2010) (citing *Gray v. First Winthrop Corp.*, 133 F.R.D. 39, 40 (N.D. Cal. 1990)). “Had the Federal Rules contemplated that a motion to dismiss under Fed[eral] R[ule of] Civ[il] P[rocedure] 12(b)(6) would stay discovery, the Rules would contain a provision to that effect.” *Id.* (quoting *Gray*, 133 F.R.D. at 40). “[S]peculation does not satisfy Rule 26(c)’s good cause requirement.” *Rosario v. Starbucks Corp.*, No. C16-1951-RAJ, 2017 WL 4122569, at *1 (W.D. Wash. Sept. 18, 2017) (finding defendant’s belief that its motion to dismiss would be granted insufficient to warrant staying discovery) (citation omitted). However, a court may “stay discovery when it is convinced that the plaintiff will be unable to state a claim for relief.” *Wenger v. Monroe*, 282 F.3d 1068, 1077 (9th Cir. 2002) (citation omitted).

Defendant argues that staying discovery pending resolution of its Motion to Dismiss is warranted because (1) the Motion involves only questions of law for the Court to decide; (2) staying discovery will promote efficiency; and (3) Plaintiff will not be prejudiced by a stay of discovery because the Motion can be decided as a matter of law without discovery, Plaintiff did not need discovery to oppose the Motion, and Defendant has taken steps to preserve relevant documents and information. Dkt. 36 at 7–8.

The success of Defendant’s first two arguments necessitate finding that its Motion to Dismiss will be granted. But because “speculation does not satisfy Rule 26(c)’s good cause requirement[,]” this is insufficient to justify granting a stay. *Rosario*, 2017 WL 4122569, at *1 (citation omitted); *see also Old Republic Title, Ltd.*, 2010 WL 4053371, at *4 (finding the defendant had not met its burden to show good cause for a stay by pointing to its pending motion to dismiss). Indeed, the undersigned recommends denying Defendant’s Motion to Dismiss, believing both that Plaintiff has successfully stated a claim for relief and that, because the Policy is ambiguous, extrinsic evidence is relevant to ascertaining its meaning. *See* Dkt. 43. If the

1 District Judge adopts the undersigned's recommendation, a delay in discovery will have
2 unnecessarily impeded the parties' ability to obtain any extrinsic evidence deemed necessary to
3 progress this litigation.

4 Defendant's arguments regarding lack of prejudice to Plaintiff are likewise unpersuasive,
5 as they similarly improperly rely on the assumption that the Motion to Dismiss will be granted.
6 If the District Judge adopts the Report and Recommendation and allows Plaintiff's lawsuit to
7 proceed, the parties will need to engage in discovery to facilitate resolution of this matter.
8 Plaintiff's ability to respond to Defendant's Motion without discovery therefore does not justify
9 granting a blanket stay of discovery, nor does Defendant's commitment to preserving relevant
10 documents and information throughout a stay. Defendant's Motion to Stay Discovery is
11 DENIED.

12 B. Protective Order

13 Defendant, in the alternative, moves to Court to enter a protective order under Rule 26(c)
14 with respect to Plaintiff's specific interrogatories and requests for production. Dkt. 36 at 8–9.

15 Litigants have a right to discover from their adversary "any nonprivileged matter that is
16 relevant to any party's claim or defense and proportional to the needs of the case, considering,"
17 among other things, "the importance of the discovery in resolving the issues, and whether the
18 burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P.
19 26(b)(1). For purposes of discovery, relevant information is that which is "reasonably calculated
20 to lead to the discovery of admissible evidence." *Schreib*, 304 F.R.D. at 284 (quoting *Brown*
21 *Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1470 (9th Cir. 1992)). The Court may limit
22 discovery through a protective order where the party resisting discovery can show "good cause"
23 that the order is needed to prevent "annoyance, embarrassment, oppression, or undue burden or

1 expense.” Fed. R. Civ. P. 26(c)(1); *see also Doe v. Trump*, 329 F.R.D. 262, 270 (W.D. Wash.
2 2018) (noting that the movant for a protective order “has the burden of clarifying, explaining,
3 and supporting its objections with competent evidence”) (quotation marks omitted). To establish
4 “good cause,” a party must “present a factual showing of a particular and specific need for the
5 protective order.” *Pulphus v. Compass Health*, No. C21-0930-TL-BAT, 2022 WL 474081, at *3
6 (W.D. Wash. Feb. 16, 2022) (citations omitted).

7 A party seeking a protective order carries a heavy burden of showing why discovery
8 should be denied. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). “District
9 courts are vested with broad discretion in determining whether a protective order is appropriate
10 and, if so, what degree of protection is warranted.” *Schreib*, 304 F.R.D. at 284 (citing *Seattle*
11 *Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984)).

12 Defendant argues the Court should enter a protective order relative to Plaintiff’s specific
13 discovery requests because Plaintiff’s interrogatories and requests for production seek documents
14 and information that are (1) “wholly irrelevant” to Plaintiff’s breach of contract and illusory
15 coverage claims, as the Court must decide those claims as a matter of law; (2) impermissible to
16 show ambiguity or that coverage is illusory; (3) not necessary for the Court to resolve
17 Defendant’s Motion; and (4) not reasonably calculated to lead to the discovery of relevant
18 evidence. Dkt. 36 at 8–9.

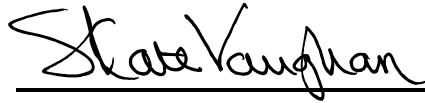
19 Defendant’s arguments fail for the same reasons that its arguments in favor of staying
20 discovery fail. The Court, having found that the Policy is ambiguous, likewise finds that
21 extrinsic evidence is relevant to the resolution of this case and will not enter a blanket protective
22 order precluding Plaintiff from accessing such evidence. Moreover, Defendant has made no
23 showing suggesting Plaintiff’s discovery requests annoy, embarrass, oppress, or impose an undue

1 burden or expense on it. Defendant has therefore failed to meet Rule 26(c)'s good cause
2 standard. Defendant's Motion for Protective Order is DENIED. If Defendant continues to
3 object to Plaintiff's discovery requests, the parties should meet and confer accordingly.

4 III. CONCLUSION

5 For the foregoing reasons, Defendant's Motion to Stay Discovery, or, in the Alternative,
6 for Protective Order, Dkt. 36, is DENIED. The Clerk is directed to send copies of this order to
7 the parties and to the Honorable Lauren King.

8 Dated this 9th day of September, 2022.

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11 S. KATE VAUGHAN
12 United States Magistrate Judge
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